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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,297	07/01/2003	Jesse Allen Curran	9D-DW-19448	2555

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EXAMINER

PATEL, RITA RAMESH

ART UNIT	PAPER NUMBER
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1792

MAIL DATE	DELIVERY MODE
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10/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/611,297

Applicant(s)

CURRAN, JESSE ALLEN

Examiner

Rita R. Patel

Art Unit

1792

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


MICHAEL BARR
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: The Office maintains its former rejections filed 7/26/07 over the instant claims. Firstly, for purposes of clarification, claims 2-5 are objected to as depending from a rejected claim, as indicated on the Office Action Summary filed with the Final rejection on 7/26/07. Secondly, claim 8 is pending by indication of its pending status in the remarks filed by Applicant on 9/26/07. Next, the objection over Figure 1 is withdrawn due to Applicant's remarks supporting that Figure 1 is not prior art, but instead a perspective view of the present application. Fourthly, the final rejection (7/26/07) is maintained, more specifically, the rejection over claims 1, 7, and 8 under 35 USC 102(b) as being anticipated by the Fox reference is maintained. In response to Applicant's arguments on page 9 that Fox fails to teach components listed (a)-(e) of the present invention, the Office maintains that the Fox invention teaches these components, correspondingly (a) Fox teaches open mesh construction, since the walls are formed of bars/slot which read on an open mesh construction; (b) top and bottom walls 12 read on a back/front wall, also walls 12 are connectively adjoined to the trackway by 1a, 1b; (c) the walls 12 form slots in between each rod 12; (d) the walls 12 all move with respect to one another since they are parallel, also the walls 12 are perpendicular to a longitudinal/vertical axis, additionally the basket is transformable to a first and second size (see col. 1, lines 29-31), (e) a first size, more notably an open position can secure small items while permitting flow of liquid therethrough, since walls 12 form slots for water to flow through. Moreover, Applicant argues that Fox is a drying rack for laundered articles and not a dishwasher rack basket assembly, however, this is merely an argument of intended use, and it has been established that if the prior art structure is capable of performing the claimed use then it meets the claim. In re Casey, 152 USPQ 235, 238 (CCPA 1967); In re Otto, 136 USPA 459 (CPA 1963), thus since the invention of Fox is capable of performing the functions of a dishwasher rack, it then meets the claims. Also, Applicant contests that Fox does not describe or suggest that the brackets connected to a joist are capable of being connected to a dishwasher rack, however, despite Fox's stately recitation of its capability, it can be seen that brackets/joists are capable of connecting itself to a structure, therefore since the brackets/joists of Fox are capable of performing the function of being connected to a dishwasher. Finally, since the rejection over independent claim 1 is maintained, the rejections over dependent claims therefrom are also maintained. Thus claims 1 and 6-8 are rejected; claims 2-5 are objected to, and claims 9-20 are allowed.